

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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**LOUIS M. GERSON COMPANY, INC.,**

**Civil No. 04-12389 (MLW/RBC)**

**Plaintiff,**

**v.**

**3M COMPANY'S MOTION TO  
DISMISS FOR LACK OF SUBJECT  
MATTER JURISDICTION UNDER  
RULE 12(b)(1)**

**3M COMPANY,**

**Defendant.**

**ORAL ARGUMENT REQUESTED**

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Together herewith, 3M Company has filed a Covenant Not to Sue ("Covenant"). The Covenant divests this Court of subject matter jurisdiction. *Super Sack Mfg. Corp. v. Chase Packaging Corp.*, 57 F.3d 1054 (Fed. Cir. 1995). Accordingly, 3M Company hereby moves the Court for an order dismissing the complaint with prejudice pursuant to Federal Rule of Civil Procedure 12(b)(1).

The motion is based on the concurrently filed Memorandum, the Covenant, all documents on file with the Court, any other oral or documentary evidence as may be presented, and such other matters of which the Court may properly take judicial notice.

By its attorneys,

Dated: November 23, 2004

/s/ Frank E. Scherkenbach  
Frank E. Scherkenbach (BBO #653819)  
FISH & RICHARDSON P.C.  
225 Franklin Street  
Boston, MA 02110

Attorneys for Defendant  
3M COMPANY

**REQUEST FOR ORAL ARGUMENT**

Pursuant to Local Rule 7.1(d), oral argument is hereby requested.

Dated: November 23, 2004

/s/ Frank E. Scherkenbach  
Frank E. Scherkenbach

**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(a)(2)**

I, **Frank E. Scherkenbach**, hereby certify that on November 22, 2004 I requested that plaintiff stipulate to the relief sought by this motion, but was unable to procure its agreement.

Dated: November 23, 2004

/s/ Frank E. Scherkenbach  
Frank E. Scherkenbach (BBO #653819)

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing 3M COMPANY'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION UNDER RULE 12(b)(1) was served on counsel for Plaintiff regular mail on Robert L. Kann, Bromberg & Sunstein LLP, 125 Summer Street, Boston, MA 02110 on this 23rd day of November, 2004.

/s/ Kathleen J. Tobin  
Kathleen J. Tobin